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SERVICE DATE - OCTOBER 20, 2016

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 716 (Sub-No. 1)

CIVIL MONETARY PENALTY INFLATION ADJUSTMENT RULE

Digest:¹ The Board is issuing an interim final rule to increase its existing civil monetary penalties in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. It will thereafter adjust these penalties for inflation at least once every year.

Decided: October 12, 2016

AGENCY: Surface Transportation Board.

ACTION: Interim final rule.

SUMMARY: The Surface Transportation Board (Board) is issuing an interim final rule to adjust the Board's civil monetary penalties for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. As mandated by that act, the Board is issuing a "catch-up adjustment" for its penalties and will thereafter make annual inflation adjustments according to a specified formula.

DATES: This interim final rule is effective on October 20, 2016.

FOR FURTHER INFORMATION CONTACT: Allison Davis: (202) 245-0378. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), passed as part of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, 129 Stat. 599. The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Pub. L. No. 101-410, 104 Stat. 890

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

(codified as amended at 28 U.S.C. § 2461 note), as previously amended by the Debt Collection Improvement Act of 1996 (1996 Act), Pub. L. No. 104-134, 110 Stat. 1321, in order to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.²

The 1996 Act required each federal agency to adopt regulations at least once every four years that adjust for inflation the maximum amount of civil monetary penalties under the statutes administered by the agency. In accordance with the 1996 Act, the Board increased its existing civil monetary penalties, which had not been adjusted for inflation since they were prescribed in the ICC Termination Act of 1995 (ICCTA), Pub. L. No. 104-88, 109 Stat. 803, by 10%, through a final rule issued in the main docket of this proceeding on October 22, 2012.

The 2015 Act requires agencies to adjust their civil monetary penalties for inflation through an initial “catch-up adjustment.”³ The 2015 Act requires that this adjustment be issued through an interim final rulemaking and sets forth a specific methodology to calculate the adjustment. To arrive at the adjusted penalty, the agency must multiply the penalty amount when it was established or last adjusted by Congress, excluding adjustments under the 1990 Act, by a multiplier that is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October in the year the penalty amount was established or last adjusted by Congress, and the October 2015 CPI-U.⁴ As mandated by statute, penalty level adjustments should be rounded to the nearest dollar, and the initial increase of penalties shall not exceed 150%.

Following the catch-up adjustment, the 2015 Act then directs agencies to adjust their civil penalties for inflation annually, beginning on January 15, 2017, and no later than January 15 of every year thereafter. Annual inflation adjustments will be based on the percent change between the October CPI-U preceding the date of the adjustment and the prior year’s October CPI-U. As with the catch-up adjustment, penalty level adjustments should be rounded to the nearest dollar.

² A “civil monetary penalty” is defined by the 1990 Act as: “any penalty, fine, or other sanction that—(A)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; and (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.” See also 49 C.F.R. § 1022.2(b).

³ Under the 2015 Act, the initial penalty adjustments were to take effect no later than August 1, 2016. The rules issued here will take effect immediately upon publication.

⁴ The Office of Management and Budget issued guidance to agencies on implementing the catch-up adjustments and provided multipliers to adjust the penalty level based on the year the penalty was established or last adjusted pursuant to law. See Memorandum from the Office of Management and Budget, M-16-06, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Feb. 24, 2016).

II. Discussion

The statutory definition of civil monetary penalty covers the civil penalty provisions under the Rail Carrier (Part A), Motor and Water Carriers (Part B), and Pipeline Carrier (Part C) provisions of the Interstate Commerce Act, as amended by ICCTA. The Board's civil (and criminal) penalty authority related to rail transportation appears at 49 U.S.C. §§ 11901-11908. The Board's penalty authority related to motor carriers, water carriers, brokers, and freight forwarders appears at 49 U.S.C. §§ 14901-14915. The Board's penalty authority related to pipeline carriers appears at 49 U.S.C. §§ 16101-16106.⁵

As set forth in this interim final rule, the Board is amending 49 C.F.R. pt. 1022 so that its regulations and civil monetary penalties conform to the requirements of the 2015 Act. The adjusted penalties set forth in the rule will apply only to violations which occur after the effective date of this regulation.

III. Interim Final Rule

The interim final rule is set forth at the end of this decision. This interim final rule is issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA), 5 U.S.C. § 553(b)(B), does not require that process “when the agency for good cause finds” that public notice and comment are “unnecessary.” Here, Congress has mandated that the agency make the catch-up inflation adjustment through an interim final rule. The Board has no discretion to set alternative levels of adjusted civil monetary penalties, because the amount of the inflation adjustment must be calculated in accordance with the statutory formula. The Board simply determines the amount of inflation adjustments by performing technical, ministerial computations. Because the Board has no discretion to do anything except promulgate the rule and perform ministerial computations to apply it, public comment would serve no useful purpose. Accordingly, the Board has determined that there is good cause to promulgate this rule without soliciting public comment and to make this regulation effective immediately upon publication.

The following chart shows the relevant statutory provision and penalty description, the baseline penalty, the values used in the calculations, the relevant cap imposed by the 2015 Act for the catch-up adjustment,⁶ and the rounded catch-up adjustment.

⁵ The Board also has criminal penalty authority, enforceable in a federal criminal court. Congress has not, however, authorized federal agencies to adjust statutorily-prescribed criminal penalty provisions for inflation, and this rule does not address those provisions.

⁶ All of the applicable penalty adjustments fell below the 150% cap on the catch-up adjustments.

U.S. Code Citation	Civil Monetary Penalty Description	Baseline Penalty	Multiplier (year)	Multiplier Result	2015 Act Cap	Adjusted Penalty Amount
	Rail Carrier Civil Penalties					
49 U.S.C. § 11901(a)	Unless otherwise specified, maximum penalty for each knowing violation under this part, and for each day.	\$5,000	1.50245 (1996)	\$7,512	\$13,750	\$7,512
49 U.S.C. § 11901(b)	For each violation under § 11124(a)(2) or (b).	\$500	1.50245 (1996)	\$751	\$1,375	\$751
49 U.S.C. § 11901(b)	For each day violation continues.	\$25	1.50245 (1996)	\$38	\$69	\$38
49 U.S.C. § 11901(c)	Maximum penalty for each knowing violation under §§ 10901-10906.	\$5,000	1.50245 (1996)	\$7,512	\$13,750	\$7,512
49 U.S.C. § 11901(d)	For each violation under §§ 11123 or 11124(a)(1).	\$100-\$500	1.50245 (1996)	\$150-\$751	\$275-\$1,375	\$150-\$751
49 U.S.C. § 11901(d)	For each day violation continues.	\$50	1.50245 (1996)	\$75	\$138	\$75
49 U.S.C. § 11901(e)(1)	For each violation under §§ 11141-11145.	\$500	1.50245 (1996)	\$751	\$1,375	\$751
49 U.S.C. § 11901(e)(2)	For each violation under § 11144(b)(1).	\$100	1.50245 (1996)	\$150	\$275	\$150
49 U.S.C. § 11901(e)(3-4)	For each violation of reporting requirements, for each day.	\$100	1.50245 (1996)	\$150	\$275	\$150
	Motor and Water Carrier Civil Penalties					
49 U.S.C. § 14901(a)	Minimum penalty for each violation and for each day.	\$1,000	1.02819 (2012)	\$1,028	n/a	\$1,028
49 U.S.C. § 14901(a)	For each violation under §§ 13901 or 13902(c).	\$10,000	1.02819 (2012)	\$10,282	n/a	\$10,282
49 U.S.C. § 14901(a)	For each violation related to transportation of passengers.	\$25,000	1.02819 (2012)	\$25,705	n/a	\$25,705
49 U.S.C. § 14901(b)	For each violation of the hazardous waste rules under § 3001 of the Solid Waste Disposal Act.	\$20,000-\$40,000	1.02819 (2012)	\$20,564-\$41,128	n/a	\$20,564-\$41,128

49 U.S.C. § 14901(d)(1)	Minimum penalty for each violation of household good regulations, and for each day.	\$1,000	1.50245 (1996)	\$1,502	\$2,750	\$1,502
49 U.S.C. § 14901(d)(2)	Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement.	\$10,000	1.50245 (1996)	\$15,025	\$27,500	\$15,025
49 U.S.C. § 14901(d)(3)	Minimum penalty for each instance of transportation of household goods without being registered.	\$25,000	1.50245 (1996)	\$37,561	\$68,750	\$37,561
49 U.S.C. § 14901(e)	Minimum penalty for each violation of a transportation rule.	\$2,000	1.50245 (1996)	\$3,005	\$5,500	\$3,005
49 U.S.C. § 14901(e)	Minimum penalty for each additional violation.	\$5,000	1.50245 (1996)	\$7,512	\$13,750	\$7,512
49 U.S.C. § 14903(a)	Maximum penalty for undercharge or overcharge of tariff rate, for each violation.	\$100,000	1.50245 (1996)	\$150,245	\$275,000	\$150,245
49 U.S.C. § 14904(a)	For first violation, rebates at less than the rate in effect.	\$200	1.50245 (1996)	\$300	\$550	\$300
49 U.S.C. § 14904(a)	For all subsequent violations.	\$250	1.50245 (1996)	\$376	\$688	\$376
49 U.S.C. § 14904(b)(1)	Maximum penalty for first violation for undercharges by freight forwarders.	\$500	1.50245 (1996)	\$751	\$1,375	\$751
49 U.S.C. § 14904(b)(1)	Maximum penalty for subsequent violations.	\$2,000	1.50245 (1996)	\$3,005	\$5,500	\$3,005
49 U.S.C. § 14904(b)(2)	Maximum penalty for other first violations under § 13702.	\$500	1.50245 (1996)	\$751	\$1,375	\$751
49 U.S.C. § 14904(b)(2)	Maximum penalty for subsequent violations.	\$2,000	1.50245 (1996)	\$3,005	\$5,500	\$3,005
49 U.S.C. § 14905(a)	Maximum penalty for each knowing violation of § 14103(a), and knowingly	\$10,000	1.50245 (1996)	\$15,025	\$27,500	\$15,025

	authorizing, consenting to, or permitting a violation of § 14103(a) & (b).					
49 U.S.C. § 14906	Minimum penalty for first attempt to evade regulation.	\$2,000	1.02819 (2012)	\$2,056	n/a	\$2,056
49 U.S.C. § 14906	Minimum amount for each subsequent attempt to evade regulation.	\$5,000	1.02819 (2012)	\$5,141	n/a	\$5,141
49 U.S.C. § 14907	Maximum penalty for recordkeeping/reporting violations.	\$5,000	1.50245 (1996)	\$7,512	\$13,750	\$7,512
49 U.S.C. § 14908(a)(2)	Maximum penalty for violation of § 14908(a)(1).	\$2,000	1.50245 (1996)	\$3,005	\$5,500	\$3,005
49 U.S.C. § 14910	When another civil penalty is not specified under this part, for each violation, for each day.	\$500	1.50245 (1996)	\$751	\$1,375	\$751
49 U.S.C. § 14915(a)(1) & (2)	Minimum penalty for holding a household goods shipment hostage, for each day.	\$10,000	1.19397 (2005)	\$11,940	\$27,500	\$11,940
	Pipeline Carrier Civil Penalties					
49 U.S.C. § 16101(a)	Maximum penalty for violation of this part, for each day.	\$5,000	1.50245 (1996)	\$7,512	\$13,750	\$7,512
49 U.S.C. § 16101(b)(1) & (4)	For each recordkeeping violation under § 15722, each day.	\$500	1.50245 (1996)	\$751	\$1,375	\$751
49 U.S.C. § 16101(b)(2) & (4)	For each inspection violation liable under § 15722, each day.	\$100	1.50245 (1996)	\$150	\$275	\$150
49 U.S.C. § 16101(b)(3) & (4)	For each reporting violation under § 15723, each day.	\$100	1.50245 (1996)	\$150	\$275	\$150
49 U.S.C. § 16103(a)	Maximum penalty for improper disclosure of information.	\$1,000	1.50245 (1996)	\$1,502	\$2,750	\$1,502

IV. Regulatory Flexibility Statement

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. §§ 801 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking

requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

V. Paperwork Reduction Act

This interim final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501 et seq.

VI. List of Subjects in 49 CFR Part 1022

Administrative practice and procedures, Brokers, Civil penalties, Freight forwarders, Motor carriers, Pipeline carriers, Rail carriers, Water carriers.

It is ordered:

1. The Board amends its rules as set forth in this decision. Notice of the interim final rule will be published in the Federal Register.
2. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

Code of Federal Regulations

For the reasons set forth in the preamble, part 1022 of title 49, chapter X, of the Code of Federal Regulations is amended as follows:

PART 1022—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

1. The authority citation for part 1022 continues to read as follows:

Authority: 5 U.S.C. 551-557; 28 U.S.C. 2461 note; 49 U.S.C. 11901, 14901, 14903, 14904, 14905, 14906, 14907, 14908, 14910, 14915, 16101, 16103.

2. Revise § 1022.1 to read as follows:

§ 1022.1 Scope and purpose.

The purpose of this part is to establish a method to adjust for inflation the civil monetary penalties provided by law within the jurisdiction of the Board, in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101-410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. 114-74, 129 Stat. 599. These penalties shall be subject to review and adjustment annually using the method specified in this part.

3. Amend § 1022.2 as follows:

- a Revise paragraph (d).

- b Add paragraph (e).

The revisions read as follows:

§ 1022.2 Definitions.

(d) *Cost-of-Living Adjustment* means the percentage (if any) by which the Consumer Price Index for the month of October preceding the adjustment exceeds the Consumer Price Index for the month of October one year before the month of October preceding date of the adjustment.

(e) *Initial Cost-of-Living Adjustment* means, for each civil monetary penalty, the percentage (if any) by which the Consumer Price Index for the month of October 2015 exceeds the Consumer Price Index of the month of October of the calendar year during which the amount of such civil monetary penalty was established or adjusted under a provision of law.

4. Amend § 1022.3 by revising the introductory text to read as follows:

§1022.3 Civil monetary penalty inflation adjustment.

The Board shall, immediately, and at least every year thereafter –

5. Revise § 1022.4 to read as follows:

§ 1022.4 Cost-of living adjustments of civil monetary penalties.

(a) The inflation adjustment under § 1022.3 will initially be determined by increasing each maximum civil monetary penalty by the initial cost-of-living adjustment. Not later than January 15 of every year thereafter, the inflation adjustment will subsequently be determined by increasing the maximum civil monetary penalty for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this section shall be rounded to the nearest dollar.

(b) The initial cost-of-living inflation adjustment required by the statute results in the following adjustments to the civil monetary penalties within the jurisdiction of the Board:

U.S. Code Citation	Civil Monetary Penalty Description	Baseline Penalty Amount	Adjusted Penalty Amount (2016)
	Rail Carrier Civil Penalties		
49 U.S.C. 11901(a)	Unless otherwise specified, maximum penalty for each knowing violation under this part, and for each day.	\$5,000	\$7,512
49 U.S.C. 11901(b)	For each violation under § 11124(a)(2) or (b).	\$500	\$751
49 U.S.C. 11901(b)	For each day violation continues.	\$25	\$38
49 U.S.C. 11901(c)	Maximum penalty for each knowing violation under §§ 10901-10906.	\$5,000	\$7,512
49 U.S.C. 11901(d)	For each violation under §§ 11123 or 11124(a)(1).	\$100-\$500	\$150-\$751
49 U.S.C. 11901(d)	For each day violation continues.	\$50	\$75
49 U.S.C. 11901(e)(1)	For each violation under §§ 11141-11145.	\$500	\$751
49 U.S.C. 11901(e)(2)	For each violation under § 11144(b)(1).	\$100	\$150
49 U.S.C. 11901(e)(3-4)	For each violation of reporting requirements, for each day.	\$100	\$150
	Motor and Water Carrier Civil Penalties		

49 U.S.C. 14901(a)	Minimum penalty for each violation and for each day.	\$1,000	\$1,028
49 U.S.C. 14901(a)	For each violation under §§ 13901 or 13902(c).	\$10,000	\$10,282
49 U.S.C. 14901(a)	For each violation related to transportation of passengers.	\$25,000	\$25,705
49 U.S.C. 14901(b)	For each violation of the hazardous waste rules under § 3001 of the Solid Waste Disposal Act.	\$20,000-\$40,000	\$20,564-\$41,128
49 U.S.C. 14901(d)(1)	Minimum penalty for each violation of household good regulations, and for each day.	\$1,000	\$1,502
49 U.S.C. 14901(d)(2)	Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement.	\$10,000	\$15,025
49 U.S.C. 14901(d)(3)	Minimum penalty for each instance of transportation of household goods without being registered.	\$25,000	\$37,561
49 U.S.C. 14901(e)	Minimum penalty for each violation of a transportation rule.	\$2,000	\$3,005
49 U.S.C. 14901(e)	Minimum penalty for each additional violation.	\$5,000	\$7,512
49 U.S.C. 14903(a)	Maximum penalty for undercharge or overcharge of tariff rate, for each violation.	\$100,000	\$150,245
49 U.S.C. 14904(a)	For first violation, rebates at less than the rate in effect.	\$200	\$300
49 U.S.C. 14904(a)	For all subsequent violations.	\$250	\$376
49 U.S.C. 14904(b)(1)	Maximum penalty for first violation for undercharges by freight forwarders.	\$500	\$751
49 U.S.C. 14904(b)(1)	Maximum penalty for subsequent violations.	\$2,000	\$3,005
49 U.S.C. 14904(b)(2)	Maximum penalty for other first violations under § 13702.	\$500	\$751
49 U.S.C. 14904(b)(2)	Maximum penalty for subsequent violations.	\$2,000	\$3,005
49 U.S.C. 14905(a)	Maximum penalty for each knowing violation of § 14103(a), and knowingly authorizing, consenting to, or permitting a violation of § 14103(a) & (b).	\$10,000	\$15,025
49 U.S.C. 14906	Minimum penalty for first attempt to evade regulation.	\$2,000	\$2,056

49 U.S.C. 14906	Minimum amount for each subsequent attempt to evade regulation.	\$5,000	\$5,141
49 U.S.C. 14907	Maximum penalty for recordkeeping/reporting violations.	\$5,000	\$7,512
49 U.S.C. 14908(a)(2)	Maximum penalty for violation of § 14908(a)(1).	\$2,000	\$3,005
49 U.S.C. 14910	When another civil penalty is not specified under this part, for each violation, for each day.	\$500	\$751
49 U.S.C. 14915(a)(1) & (2)	Minimum penalty for holding a household goods shipment hostage, for each day.	\$10,000	\$11,940
	Pipeline Carrier Civil Penalties		
49 U.S.C. 16101(a)	Maximum penalty for violation of this part, for each day.	\$5,000	\$7,512
49 U.S.C. 16101(b)(1) & (4)	For each recordkeeping violation under § 15722, each day.	\$500	\$751
49 U.S.C. 16101(b)(2) & (4)	For each inspection violation liable under § 15722, each day.	\$100	\$150
49 U.S.C. 16101(b)(3) & (4)	For each reporting violation under § 15723, each day.	\$100	\$150
49 U.S.C. 16103(a)	Maximum penalty for improper disclosure of information.	\$1,000	\$1,502